In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.20029 of 2006

.....

Date of decision:19.12.2006

The Managing Committee of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib through its Principal

.....Petitioner

v.

The Director, Public Instructions (Colleges), Punjab, Chandigarh and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Harmanjit Singh Thiara, Advocate for the petitioner.

Mr. Puneet Jindal, Advocate for the caveator-respondent No.3.

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The petitioner Managing Committee of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib seeks quashing of the order dated 29.8.2005 (Annexure-P.1) passed by the Director, Public Instructions (Colleges), Punjab (`DPI (Colleges)' – for short) (respondent No.1) and the order dated 8.8.2006 (Annexure-P.2) passed by the Presiding Officer, State Colleges Tribunal, Punjab (`Tribunal' – for short) (respondent No.2).

Jaswant Singh (respondent No.3) joined as Clerk in Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib on 1.9.1972. He was promoted as Senior Clerk on 1.4.1988. The respondent No.3 and another employee, namely, Karnail Singh, Clerk started absenting themselves from duty on Saturdays on the assumption that every Saturday is a holiday. In

fact, Saturdays were not gazetted holidays. The Punjabi University Calendar even did not provide for Saturday being a holiday in the institutions being run by private managements. The petitioner management alleged that despite Saturday not being a gazetted holiday, the respondent no.3 absented himself for 23 Saturdays during the period from 28.10.1989 to 26.12.1992 on the assumption that Saturday is a gazetted holiday. Accordingly, pay for 23 days was deducted on the principle of `no work no pay'.

Respondent No.3 thereafter claimed master pay scale with effect from 1.1.1993 with the benefit of one additional increment in terms of DPI (Colleges), Punjab memo dated 2.3.1995 and revised pay scale from 1.1.1996 in terms of DPI (Colleges), Punjab letter dated 17.5.1999. These were declined by the petitioner Managing Committee. Rather, respondent No.3 was charged in respect of the following allegations:-

i) Disobedience of orders of the Principal of the College

ii) Insulting behaviour

iii) Using intemperate and filthy language towards the Principal of the college

iv) Collecting un-authorizedly money from the students,

v) Insulting the Principal; and

vi) Willful absence from duty.

Earlier, a civil suit had been filed on 2.2.1990 by the Non-Teaching Employees Union of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib through Jaswant Singh (respondent No.3) acting as its Secretary. The said suit was filed before the Civil Court at Anandpur Sahib seeking

declaration to the effect that non-teaching employees of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib are entitled to Saturdays as gazetted holidays during the summer, winter and autumn vacations. The learned Additional Senior Sub Judge, Anandpur Sahib on 24.12.1992 dismissed the said suit. The appeal filed by the Non-Teaching Employees Union was also dismissed by the Additional District Judge, Rupnagar on 5.12.1997 (Annexure-P.6). It was observed that the school authorities rightly marked the non-teaching staff as absent from duty as they had not attended duty on Saturdays. Besides, the Management of the institution was within its right to take necessary action against the officials who absented themselves from duty on Saturdays.

The counsel for respondent No.3 after the appeal was dismissed by the learned Additional District Judge, Rupnagar on 5.12.1997 sent legal notices dated 31.8.2001 and 18.9.2001 for meeting the demands of the Non-Teaching Employees Union of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib. Thereafter, C.W.P. No.17161 of 2001 was filed in this Court which was disposed of on 13.2.2002 with the direction to the respondents in the said writ petition to pass a speaking order in respect of the legal notices dated 31.8.2001 and 18.9.2001. In order to comply with the directions of this Court, a Sub Committee was constituted by the petitioner management which on 10.6.2002 recommended the giving of an additional increment in master scale with effect from 1.1.1993 and the grant of revised pay scale w.e.f. 1996 to respondent No.3 after making a break in his service. The recommendations of Sub Committee were duly approved by the Education Committee of the Shiromani Gurudwara Prabandhak

Committee, Amritsar (`SGPC' – for short) in its meting held on 17.6.2002 (Annexure-P.8). Approval was also accorded to constitute a Sub Committee for holding an inquiry in the matter regarding derogatory language used and certain acts of misdemeanour committed by respondent No.3 against the Principal of the College. The respondent No.3 on coming to know of the decision to impose break in his service, filed C.W.P. No.20525 of 2002 in this Court challenging the decision with regard to making a break in his service which deprived him of the service benefit from 1.9.1972 to 26.12.1992 while placing him at the minimum stage of pay scale on 27.12.1992 as the last date of his absence from duty was 26.12.1992. The said writ petition (CWP No.20525 of 2002) was disposed of on 9.2.2004 with a direction to the petitioner management to treat the legal notice dated 16.7.2002 as a representation filed by respondent no.3 and another employee, namely, Karnail Singh and to take a decision on the same after giving opportunity of hearing to the petitioners of the said writ petition. In compliance with the directions of this Court, the President of the SGPC constituted a Sub Committee for hearing respondent No.3. A hearing was given to respondent No.3 by the Sub Committee on 20.4.2004. After hearing respondent No.3, the Sub Committee vide its decision taken on 20.4.2004 (Annexure-P.9) reached the conclusion that the resolution dated 17.6.2002 (Annexure-P.8) be upheld and a recommendation was made for its implementation. In terms of the resolution dated 17.6.2002 (Annexure-P.8) the report of the Sub Committee dated 10.6.2002 (Annexure-P.7) was approved. The Sub Committee in its recommendation dated 10.6.2002 had decided regarding making a break in the service of respondent no.3 for

remaining absent from duty. Besides, the extra increment due under the master scale from 1.1.1996 in the revised scale was to be given after making a break in the service of respondent No.3 according to rules. It was further recommended that inquiry against respondent No.3 and Karnail Singh, Clerk as regards the allegations made against them be completed within six months.

Against the decision taken for making a break in the service of respondent No.3, he along with Karnail Singh under the provisions of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (`Act' - for short) and rules framed thereunder approached the DPI (Colleges), Punjab (respondent No.1) for reviewing the order regarding break in service in respect of respondent No.3 and Karnail Singh. The DPI (Colleges), Punjab (respondent No.1) vide her order dated 29.8.2005 held that the action taken by the petitioner-management was of a disciplinary nature which neither conformed to removal from service or to reduction in rank in terms of Rule 3 of the Punjab Affiliated Colleges (Security of Service) Rules, 1978 (`1978 Rules' – for short). Thus, the action of causing break in service of respondent No.3 and Karnail Singh on account of their willful absence from duty for which the salary had already been deducted and depriving them of the benefits of previous service was disapproved by respondent No.1. The petitioner-management was directed to settle the fixation of pay of respondent No.3 and Karnail Singh by granting them the benefits of continuous service as they would have continued to earn but for the wrong act of causing break in service. Against the order dated 29.8.2005 of the DPI (Colleges), Punjab (respondent No.1), the petitioner-

management filed an appeal before the Tribunal (respondent No.1), which appeal of the petitioner-management was dismissed on 8.8.2006 (Annexure-P.2). Aggrieved against the said order, the petitioner-management has filed the present petition assailing the orders dated 29.8.2005 (Annexure-P.1) and dated 8.8.2006 (Annexure-P.2) of the DPI (Colleges), Punjab (respondent No.1) and the Tribunal (respondent No.2) respectively.

We have heard learned counsel for the parties. The contention that has primarily been raised by the learned counsel for the petitioner is that the action of causing break in service of respondent No.3 does not violate the provisions of the Act. It is submitted that the petition filed by respondent No.3 before the DPI (Colleges) under Section 4 of the Act against the order of the Managing Committee dated 25.5.2004 (Annexure-P.3B), which is neither reversion nor reduction in rank of respondent No.3 was, therefore, not maintainable. It is further submitted that respondent No.3 had been absenting himself from work on the assumption that Saturdays during the summer, winter and autumn vacations are holidays whereas the Principal of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib had repeatedly informed him that Saturdays are not gazetted holidays. In fact the demand of respondent no.3 was even put to the Punjabi University, Patiala and the University authorities vide letter dated 18.12.1989 had conveyed that Saturdays are not gazetted holidays. Respondent No.3 was informed about this but he intentionally and willfully and in utter violation of the rules regulating his service absented himself on Saturdays. Therefore, the order dated 25.5.2004 (Annexure-P.3B) passed by the Principal of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib

is legal and valid.

We have given our thoughtful consideration to the contentions as raised. The respondent No.3 is stated to be absent from duty on 23 Saturdays during the period from 28.10.1989 to 26.12.1992. In respect of his claim for treating Saturdays as holidays, the respondent No.3 as also the Non-Teaching Employes Union of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib through respondent No.3 filed a civil suit on 2.2.1990 seeking declaration to the effect that the non-teaching employees of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib are entitled to gazetted holidays during summer, winter and autumn vacations and that non-granting the same was illegal, null and void, arbitrary etc. The said suit was dismissed by the learned Additional Senior Sub Judge, Anandpur Sahib on 24.12.1992. The appeal against the same was dismissed by the learned Additional District Judge, Rupnagar on 5.12.1997. It was observed that holidays to be observed during the year were to be notified by the University. As in the calendar of the University it had been made clear that there would be six working days in a week and that Saturday shall not be observed as a holiday, the judgment of trial Court that the Non-Teaching Employees Union were not entitled to adopt a list of holidays notified by the Punjab State was upheld by the learned Additional District Judge. The respondent No.3 through his counsel sent legal notices dated 31.8.2001 and 18.9.2001. In CWP No.17161 of 2001 that was filed by respondent No.3 in this Court it was directed on 13.2.2002 that a speaking order be passed on the aforesaid legal notices. In compliance with the said orders the petitioner-management constituted a Sub Committee. A meeting of the Sub

committee was held on 10.6.2002 (Annexure-P.7). Keeping in view the serious allegations against respondent No.3 and Karnail Singh in which absence from duty was also included, the Sub Committee recommended that the decision of the Additional District Judge, Rupnagar dated 5.2.1997 be implemented. Besides, it was directed that the inquiry against respondent No.3 and Karnail Singh be completed within six months regarding the allegations which were serious in nature. The recommendations of the Sub Committee made on 10.6.2002 (Annexure-P.7) were considered in the meeting of the Education Committee of the SGPC held on 17.6.2002 (Annexure-P.8). The report of the Sub Committee regarding making break in service of respondent No.3 and Karnail Singh and other employees who remained absent from duty was approved. It was also approved that after making the necessary break in service, the pay of the employees be fixed according to revised pay scale from 1.1.1996 and master scale from 1.1.1993 be given. It was also provided that powers be given to the President to constitute a Sub Committee regarding the allegations of use of filthy and insulting language used against the Principal by the employes and after completing the inquiry within six months the report may be given. The Principal of the College was authorized to issue a speaking order regarding further action. The respondent No.3 with respect to the decision to impose break in his service filed CWP No.20525 of 2002 which was disposed of on 9.2.2004 with a direction to the petitioner-management to treat the legal notice dated 16.10.2002 filed by respondent No.3 and Karnail Singh as a representation after giving opportunity of hearing to respondent No.3. A Sub Committee was constituted for implementing the directions

dated 9.2.2004 of this Court passed in CWP No.20525 of 2002. Due notice was also given to respondent No.3 and he was heard at length. The Sub Committee in its recommendation dated 20.4.2004 (Annexure-P.9) reached the conclusion that the earlier resolution dated 17.6.2002 (Annexure-P.8) be upheld and recommended for its implementation. Accordingly, the Principal of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib vide order dated 25.5.2004 (Annexure-P.3B) passed a speaking order and pay scale of the petitioner and Karnail Singh were fixed after making a break in their services. The said decision was not approved by the DPI (Colleges) (respondent No.1) vide order dated 29.8.2005 (Annexure-P.1). Appeal against the same has been dismissed by the Tribunal (respondent No.2) on 8.8.2006 (Annexure-P.2). The DPI (Colleges) (respondent No.1) observed that as a consequence of the willful absence from duty by respondent No.3 on certain Saturdays he was not paid for those days. The said action, it was observed, was of a disciplinary nature which did not conform to the procedure provided for removal from service or to reduction in rank as envisaged by the provisions of Rule 3 of the 1978 Rules. Accordingly, the action of causing break in service due to their willful absence for the period for which their salary had already been deducted and thereby depriving them the benefits of previous service was disapproved. The Appellate Authority while upholding the decision of respondent No.1 observed that the procedure for imposition of punishment had not been followed and since pay had been deducted for 23 days, respondent No.3 was not liable to be punished subsequently for the same offence by denying promotion on the ground that there was break in his service. A perusal of the order dated

25.5.2004 (Annexure-P.3B) passed by the Principal of Sri Guru Teg Bahadur Khalsa College, Anandpur Sahib would show that the absence from duty for 23 days by respondent No.3 has had a material effect on the decision making process, inasmuch as, the denial of master scale from 1.1.1993 and revised pay scale from 1.1.1996 is on account of absence from duty. This is a matter which was required to be inquired into and decided by the petitioner-management after observing to the principles of natural justice. The Sub Committee in its decision dated 10.6.2002 (Annexure-P.7) had recommended the implementation of the judgment dated 5.2.1997 (Annexure-P.6) passed by the learned Additional District Judge, Rupnagar. It was observed as in the said judgment the authorities had rightly marked the non-teaching staff as absent if they failed to report for duty on Saturdays. Besides, the management of the institution, it was observed, would be within its rights to take necessary action against its officials who absented themselves on Saturdays. The necessary action that is contemplated by the judgment dated 5.12.1997 (Annexure-P.6) of the learned Additional District Judge is that action is to be taken in accordance with law which would necessarily require the compliance with the principles of natural justice. In fact, in the very first report of the Sub Committee taken on 10.6.2002 (Annexure-P.7), it was directed that an inquiry against the officials be held and completed within six months regarding allegations which were serious in nature. The said decision of the Sub Committee was approved by the Education Committee of the SGPC on 17.6.2002 (Annexure-P.8). Accordingly, the order was passed on 25.5.2004 (Annexure-P.3B) by the Principal of Sri Guru Teg Bahadur Khalsa College,

Anandpur Sahib. The decision making process in the case in hand shows that for the absence from duty on 23 Saturdays the pay of respondent No.3 has been deducted. Further a break in his service has been recorded. For the purpose of recording a break in service of respondent No.3 necessary inquiry as contemplated by the Act and the Rules as also in due compliance with the principles of natural justice was liable to be conducted, which has not been conducted. In fact, an inquiry has already been recommended in respect of the other allegations that have been alleged against the respondent No.3. In the circumstances, no fault can be found with the orders passed by the DPI (Colleges), Punjab (respondent No.1) and by the Tribunal (respondent No.2) which would warrant interference of this Court in exercise of supervisory jurisdiction under Articles 226/227 of the Constitution.

Consequently, the writ petition is dismissed. However, nothing stated herein shall be taken as an expression of merit in respect of charges attributed to respondent No.3. Besides, the petitioner-management shall not be precluded from taking action in respect of the absence of respondent No.3 for 23 Saturdays in accordance with law and after complying with the principles of natural justice.

(S.S. Nijjar)
Judge

December 19, 2006. **(S.S. Saron)**
Judge

hsp

Whether fit for indexing: Yes